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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

ANDREW O.,

Defendant and Appellant.

D053258

(Super. Ct. No. J209513)

APPEAL from a judgment of the Superior Court of San Diego County, Laura H. Parsky, Judge. Reversed in part and affirmed in part.

Andrew O., a minor, appeals a victim restitution order imposed as a condition of his probation after he was declared a Welfare and Institutions Code¹ section 602 ward of the court. Andrew admitted a petty theft allegation (Pen. Code, § 484), and the court placed him on probation. As conditions of his probation, the court ordered Andrew to pay restitution to the victims of the theft, 30 days of home supervision, and \$264 victim

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise specified.

restitution to Lawrence Cicchetti, which victim restitution fine Andrew had been ordered to pay in an earlier delinquency proceeding for battery.

Andrew challenges the \$264 restitution order, contending the court abused its discretion by issuing the second order when the court had previously ordered the same restitution to the same victim in an earlier juvenile proceeding. We conclude the court did not have authority to reimpose in this case a victim restitution fine imposed in a prior juvenile delinquency proceeding in which jurisdiction had been terminated. Accordingly, we reverse the \$264 restitution order.

FACTS

In November 2006, the juvenile court placed Andrew on informal probation under section 654 after a true finding he committed battery on a classmate, Lawrence Cicchetti. As a condition of Andrew's probation, the court ordered victim restitution in the amount of \$264. In June 2007 the juvenile court dismissed the petition and terminated jurisdiction although the victim restitution fine had not then been paid.

On March 15, 2008, a coach at Hilltop High School caught Andrew breaking into school lockers. The coach found several combination locks and alcoholic beverages in Andrew's backpack. Police arrested Andrew for petty theft and possessing alcohol. The court dismissed all counts related to alcohol possession. Andrew admitted the theft allegation, and the court declared him a ward and placed him on formal probation. As a condition of his probation, the court ordered Andrew to pay restitution to Hilltop High School and \$264 victim restitution to Cicchetti, the victim of the 2006 battery.

DISCUSSION

A juvenile court has broad discretion to select appropriate conditions of probation. Sections 727 and 730 authorize the court to impose " ' "any and all reasonable conditions . . . to the end that justice may be done and the reformation and rehabilitation of the ward enhanced." ' " (*In re James C.* (2008) 165 Cal.App.4th 1198, 1203.) Although broad, a court's discretion is not limitless.

A minor found to be a ward of the court under section 602 must be ordered as a condition of probation to pay restitution to reimburse the victim for the economic loss suffered by the victim as a result of the minor's criminal conduct. (§ 730.6, subd. (h).) Andrew was so ordered as a condition of probation in the 2006 juvenile court proceeding.

Although the 2006 victim restitution fine had not been paid at the time jurisdiction in that proceeding was terminated, the victim retained the right to enforce that fine under section 730.6, subdivisions (l) and (r) and Penal Code section 1214 in the same manner as a civil money judgment.

Because the victim restitution fine imposed in the 2006 proceeding remained an enforceable obligation, there is no statutory authority for the reimposition of the same fine in a later juvenile proceeding. In an analogous situation, the court in *People v. Chambers* (1998) 65 Cal.App.4th 819 stated at page 823:

"Here, the trial court imposed two separate restitution fines for the same conviction: a \$200 restitution fine at the time probation was granted and a \$500 restitution fine at the time probation was revoked. There is no statutory authority justifying the second restitution fine because, as discussed above, the first restitution fine remained in force despite the revocation of probation. Accordingly, since the trial court was without statutory authority to impose the

second restitution fine, it must be stricken. (See *In re Harris* (1993) 5 Cal.4th 813, 839 [21 Cal.Rptr.2d 373, 855 P.2d 391] [correction of illegal sentence].)"

We acknowledge, as the People assert, that *Chambers* is not directly applicable to the instant case. *Chambers* was not concerned with a victim restitution fine, involved an adult criminal matter rather than a juvenile proceeding, and the revocation of probation was for the same criminal offense. However, we are persuaded the absence of statutory authority in *Chambers* to impose duplicate fines is equally applicable to the instant case.

DISPOSITION

The \$264 restitution order is reversed. In all other respects the judgment is affirmed.

McDONALD, J.

WE CONCUR:

HALLER, Acting P. J.

AARON, J.